

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

101

FAO No. 2252 of 2014 (O&M)

Date of Decision : 22.3.2018

M/s. Ess Vee Contractors Private Limited

....Appellant

vs.

The Reciprocal Co-op. Group Housing Society Limited and another

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Aman Kashyap, Advocate
for the appellant(s).

Mr. S.D. Sharma, Senior Advocate with
Mr. Anupam Sharma, Advocate
for respondent No.1.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order of the Additional District and Sessions Judge, Chandigarh dated 24.12.2013 dismissing objections filed under Section 34 of the Arbitration & Conciliation Act, 1996 (for short 'the Act') filed by the appellant.

Brief facts of the case are that the respondent had granted a contract of construction of 20 flats to the appellant. During the work itself many alleged defects were noticed including that there was eccentricity of the columns. The work was suspended and the respondent claimed arbitration from the named Arbitrator. As per the respondent, because of the eccentricity of the column and poor workmanship the whole building would have to be demolished and they raised a claim of Rs.1,75,00,000/-

odd. The Arbitrator however awarded a sum of Rs.18,50,000/- odd for the repair for the poor workmanship and eccentricity of the column. The appellant filed objection which, having been dismissed he is before this Court.

When the matter had come for hearing the following order was passed :-

“The argument raised is that initial dispute was with respect to payment of running bills and whether it was Rs.50,000/- and odd or Rs.2,80,000/- between the parties which was to be arbitrated. The arbitrator suo-motu appointed a Structural Consultant and obtained an opinion from a retired professor of the Punjab Engineering College who advised that there was something wrong in the foundation itself. Based upon that, the Arbitrator travelled beyond the terms of reference and went into remedial measures for correction of the foundation and has created a claim against the appellant for Rs.27 lacs and odd, a matter which was not contemplated at the commencement of the proceedings.

Notice of motion, returnable on 2.8.2014.

In case, execution proceedings are taken out, that shall not proceed till further orders.”

I have gone through the claim petition and found that the argument that the difference was only between Rs. 50,000/- odd or Rs. 2,80,000/- is incorrect. The claimants as mentioned above had claimed Rs. 1,75,000,00/- odd. It is therefore clear that the Arbitrator has not travelled beyond the terms of reference. Even the argument that he went into remedial measures cannot be accepted because the other option before the Arbitrator was to order demolition of the building.

Learned counsel has argued that Section 26 of the Act is violated. A perusal of the award shows that the appellant had submitted a remedial proposal which had been submitted by the Technical Teachers Training Institute Chandigarh. The Arbitrator found that that report only suggested the rectification of foundation and ground floor columns and had

completely ignored the erratic placing of reinforcement in column of upper stories as well as the insufficient or excessive cover of concrete which reduced the effective size of the column. He also found that no proper calculations had been given to study the measures suggested by it as such these were not complete. Therefore he rejected the same. It was in these circumstances that the Arbitrator appointed Dr. I.C. Syal (Ex Head of Civil Engineering Department Punjab Engineering College Chandigarh) who is stated to be top structural consultants of the region. The Arbitrator found that the proposal given by him was comprehensive with full structural details. Against that counsel for the appellant had raised technical objections which were also discussed by the Arbitrator. In the circumstances, the argument of the learned counsel that Section 26 is violated is also rejected.

The appeal stands dismissed with costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

22.3.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No